

SECOND REGULAR SESSION

# HOUSE BILL NO. 1788

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES COX (Sponsor) AND WILSON (Co-sponsor).

5779H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 453.026, 453.030, 453.077, 453.080, and 453.110, RSMo, and to enact in lieu thereof six new sections relating to adoptions, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 453.026, 453.030, 453.077, 453.080, and 453.110, RSMo, are  
2 repealed and six new sections enacted in lieu thereof, to be known as sections 453.026, 453.030,  
3 453.077, 453.080, 453.110, and 453.700, to read as follows:

453.026. 1. As early as is practical before a prospective adoptive parent accepts physical  
2 custody of a child **six months of age or older**, the person placing the child for adoption, as  
3 authorized by section 453.014, shall furnish to the court, the guardian ad litem and the  
4 prospective adoptive parent a written report regarding the child.

5 2. The person placing the child shall not be held liable for incorrect information as  
6 provided by others or unintentional errors when making the written report.

7 3. The department of social services, division of family services shall promulgate rules  
8 and regulations regarding all written information that shall be furnished to the court, the guardian  
9 ad litem and the prospective adoptive parent.

10 4. No rule or portion of a rule promulgated under the authority of this section shall  
11 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

453.030. 1. In all cases the approval of the court of the adoption shall be required and  
2 such approval shall be given or withheld as the welfare of the person sought to be adopted may,  
3 in the opinion of the court, demand.

4 2. The written consent of the person to be adopted shall be required in all cases where  
5 the person sought to be adopted is fourteen years of age or older, except where the court finds

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

6 that such child has not sufficient mental capacity to give the same. In a case involving a child  
7 under fourteen years of age, the guardian ad litem shall ascertain the child's wishes and feelings  
8 about his or her adoption by conducting an interview or interviews with the child, if appropriate  
9 based on the child's age and maturity level, which shall be considered by the court as a factor in  
10 determining if the adoption is in the child's best interests.

11 3. With the exceptions specifically enumerated in section 453.040, when the person  
12 sought to be adopted is under the age of eighteen years, the written consent of the following  
13 persons shall be required and filed in and made a part of the files and record of the proceeding:

14 (1) The mother of the child; and

15 (2) Only the man who:

16 (a) Is presumed to be the father pursuant to the subdivision (1), (2), or (3) of subsection  
17 1 of section 210.822; or

18 (b) Has filed an action to establish his paternity in a court of competent jurisdiction no  
19 later than fifteen days after the birth of the child and has served a copy of the petition on the  
20 mother in accordance with section 506.100; or

21 (c) Filed with the putative father registry pursuant to section 192.016 a notice of intent  
22 to claim paternity or an acknowledgment of paternity either prior to or within fifteen days after  
23 the child's birth, and has filed an action to establish his paternity in a court of competent  
24 jurisdiction no later than fifteen days after the birth of the child; or

25 (3) The child's current adoptive parents or other legally recognized mother and father.  
26 Upon request by the petitioner and within one business day of such request, the clerk of the local  
27 court shall verify whether such written consents have been filed with the court.

28 4. The written consent required in subdivisions (2) and (3) of subsection 3 of this section  
29 may be executed before or after the commencement of the adoption proceedings, and shall be  
30 executed in front of a judge or acknowledged before a notary public. If consent is executed in  
31 front of a judge, it shall be the duty of the judge to advise the consenting birth parent of the  
32 consequences of the consent. In lieu of such acknowledgment, the signature of the person giving  
33 such written consent shall be witnessed by the signatures of at least two adult persons whose  
34 signatures and addresses shall be plainly written thereon. The two adult witnesses shall not be  
35 the prospective adoptive parents or any attorney representing a party to the adoption proceeding.  
36 The notary public or witnesses shall verify the identity of the party signing the consent.

37 5. The written consent required in subdivision (1) of subsection 3 of this section by the  
38 birth parent shall not be executed anytime before the child is [forty-eight] **twenty-four** hours old.  
39 Such written consent shall be executed in front of a judge or acknowledged before a notary  
40 public. If consent is executed in front of a judge, it shall be the duty of the judge to advise the  
41 consenting party of the consequences of the consent. In lieu of such acknowledgment, the

signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons who are present at the execution whose signatures and addresses shall be plainly written thereon and who determine and certify that the consent is knowingly and freely given. The two adult witnesses shall not be the prospective adoptive parents or any attorney representing a party to the adoption proceeding. The notary public or witnesses shall verify the identity of the party signing the consent.

6. A consent is final when executed, unless the consenting party, prior to a final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given. The burden of proving the consent was not freely and voluntarily given shall rest with the consenting party. Consents in all cases shall have been executed not more than six months prior to the date the petition for adoption is filed.

7. A consent form shall be developed through rules and regulations promulgated by the department of social services. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536. If a written consent is obtained after August 28, 1997, but prior to the development of a consent form by the department and the written consent complies with the provisions of subsection 8 of this section, such written consent shall be deemed valid.

8. However, the consent form must specify that:

(1) The birth parent understands the importance of identifying all possible fathers of the child and may provide the names of all such persons; and

(2) The birth parent understands that if he denies paternity, but consents to the adoption, he waives any future interest in the child.

9. The written consent to adoption required by subsection 3 and executed through procedures set forth in subsection 5 of this section shall be valid and effective even though the parent consenting was under eighteen years of age, if such parent was represented by a guardian ad litem, at the time of the execution thereof.

10. Where the person sought to be adopted is eighteen years of age or older, his or her written consent alone to his or her adoption shall be sufficient.

11. A birth parent, including a birth parent less than eighteen years of age, shall have the right to legal representation and payment of any reasonable legal fees incurred throughout the adoption process. In addition, the court may appoint an attorney to represent a birth parent if:

(1) A birth parent requests representation;

(2) The court finds that hiring an attorney to represent such birth parent would cause a financial hardship for the birth parent; and

(3) The birth parent is not already represented by counsel.

77           12. Except in cases where the court determines that the adoptive parents are unable to  
78 pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court shall  
79 order the costs of the attorney fees incurred pursuant to subsection 11 of this section to be paid  
80 by the prospective adoptive parents or the child-placing agency.

          453.077. 1. When a child has been placed with the petitioner for the required  
2 [six-month] **three-month** placement period, the person conducting the preplacement assessment  
3 of the adoption or other persons authorized to conduct assessments pursuant to section 453.070  
4 shall provide the court with a postplacement assessment. The specific content of which shall be  
5 determined by rule by the department of social services, division of family services. The  
6 postplacement assessment shall include an update of the preplacement assessment which was  
7 submitted to the court pursuant to section 453.070, and a report on the emotional, physical and  
8 psychological status of the child. If an assessment is conducted after August 28, 1997, but prior  
9 to the promulgation of rules and regulations by the department concerning the contents of such  
10 assessment, any discrepancy between the contents of the actual assessment and the contents of  
11 the assessment required by department rule shall not be used as the sole basis for invalidating  
12 an adoption.

13           2. No rule or portion of a rule promulgated pursuant to the authority of this section shall  
14 become effective unless it has been promulgated pursuant to the provisions of chapter 536.

          453.080. 1. The court shall conduct a hearing to determine whether the adoption shall  
2 be finalized. During such hearing, the court shall ascertain whether:

3           (1) The person sought to be adopted, if a child, has been in the lawful and actual custody  
4 of the petitioner for a period of at least [six] **three** months prior to entry of the adoption decree;  
5 except that the [six-month] **three-month** period may be waived if the person sought to be  
6 adopted is a child **under six months of age at the time the petitioner obtains lawful and**  
7 **actual custody of the child or is a child** who is under the prior and continuing jurisdiction of  
8 a court pursuant to chapter 211 and the person desiring to adopt the child is the child's current  
9 foster parent. "Lawful and actual custody" shall include a transfer of custody pursuant to the  
10 laws of this state, another state, a territory of the United States, or another country;

11           (2) The court has received and reviewed a postplacement assessment on the monthly  
12 contacts with the adoptive family pursuant to section 453.077, except for good cause shown in  
13 the case of a child adopted from a foreign country;

14           (3) The court has received and reviewed an updated financial affidavit;

15           (4) The court has received the recommendations of the guardian ad litem and has  
16 received and reviewed the recommendations of the person placing the child, the person making  
17 the assessment and the person making the postplacement assessment;

18 (5) There is compliance with the uniform child custody jurisdiction act, sections 452.440  
19 to 452.550;

20 (6) There is compliance with the Indian Child Welfare Act, if applicable;

21 (7) There is compliance with the Interstate Compact on the Placement of Children  
22 pursuant to section 210.620; and

23 (8) It is fit and proper that such adoption should be made.

24 2. If a petition for adoption has been filed pursuant to section 453.010 and a transfer of  
25 custody has occurred pursuant to section 453.110, the court may authorize the filing for  
26 finalization in another state if the adoptive parents are domiciled in that state.

27 3. If the court determines the adoption should be finalized, a decree shall be issued  
28 setting forth the facts and ordering that from the date of the decree the adoptee shall be for all  
29 legal intents and purposes the child of the petitioner or petitioners. The court may decree that  
30 the name of the person sought to be adopted be changed, according to the prayer of the petition.

31 4. Before the completion of an adoption, the exchange of information among the parties  
32 shall be at the discretion of the parties. Upon completion of an adoption, further contact among  
33 the parties shall be at the discretion of the adoptive parents. The court shall not have jurisdiction  
34 to deny continuing contact between the adopted person and the birth parent, or an adoptive parent  
35 and a birth parent. Additionally, the court shall not have jurisdiction to deny an exchange of  
36 identifying information between an adoptive parent and a birth parent.

453.110. 1. No person, agency, organization or institution shall surrender custody of a  
2 minor child, or transfer the custody of such a child to another, and no person, agency,  
3 organization or institution shall take possession or charge of a minor child so transferred, without  
4 first having filed a petition before the circuit court sitting as a juvenile court of the county where  
5 the child may be, praying that such surrender or transfer may be made, and having obtained such  
6 an order from such court approving or ordering transfer of custody.

7 2. If any such surrender or transfer is made without first obtaining such an order, such  
8 court shall, on petition of any public official or interested person, agency, organization or  
9 institution, order an investigation and report as described in section 453.070 to be completed by  
10 the division of family services and shall make such order as to the custody of such child in the  
11 best interest of such child.

12 3. Any person violating the terms of this section shall be guilty of a class D felony.

13 4. The investigation required by subsection 2 of this section shall be initiated by the  
14 division of family services within forty-eight hours of the filing of the court order requesting the  
15 investigation and report and shall be completed within thirty days. The court shall order the  
16 person having custody in violation of the provisions of this section to pay the costs of the  
17 investigation and report.

18           5. This section shall not be construed to prohibit any parent, agency, organization or  
19 institution from placing a child with another individual for care if the right to supervise the care  
20 of the child and to resume custody thereof is retained, **to prohibit a parent from placing a child**  
21 **with another individual for care as part of a preadoption placement with said individual**  
22 **if the right to supervise the care of the child and to resume custody thereof is retained until**  
23 **superseded by any court order regarding the legal or physical custody of the child,** or from  
24 placing a child with a licensed foster home within the state through a child-placing agency  
25 licensed by this state as part of a preadoption placement.

26           6. After the filing of a petition for the transfer of custody for the purpose of adoption,  
27 the court may enter an order of transfer of custody if the court finds all of the following:

28           (1) A family assessment has been made as required in section 453.070 and has been  
29 reviewed by the court;

30           (2) A recommendation has been made by the guardian ad litem;

31           (3) A petition for transfer of custody for adoption has been properly filed or an order  
32 terminating parental rights has been properly filed;

33           (4) The financial affidavit has been filed as required under section 453.075;

34           (5) The written report regarding the child who is the subject of the petition containing  
35 the information has been submitted as required by section 453.026;

36           (6) Compliance with the Indian Child Welfare Act, if applicable; and

37           (7) Compliance with the Interstate Compact on the Placement of Children pursuant to  
38 section 210.620.

39           7. A hearing on the transfer of custody for the purpose of adoption is not required if:

40           (1) The conditions set forth in subsection 6 of this section are met;

41           (2) The parties agree and the court grants leave; and

42           (3) Parental rights have been terminated pursuant to section 211.444 or 211.447.

**453.700. 1. Only an attorney licensed to practice law or a child placing agency**  
2 **licensed under the laws of the state of Missouri may place or cause to be placed an**  
3 **advertisement or listing of the attorney's or agency's telephone number or other contact**  
4 **information in a telephone directory or other advertising distributed within the state of**  
5 **Missouri that states or implies that:**

6           (1) A child is offered or wanted for adoption; or

7           (2) The attorney or agency is able to place, locate, or receive a child for adoption.

8           2. A person or entity that publishes a telephone directory or other means of  
9 advertising or listing of contact information that is distributed in Missouri may publish an  
10 advertisement or listing described in subsection 1 of this section only if the advertisement  
11 or contact information contains the following:

12           **(1) For an attorney licensed to practice law in Missouri, the attorney's current bar**  
13 **number. However, an attorney listing in a telephone director or other listing under an**  
14 **adoption or adoption-related category that only provides the attorney's name, address, and**  
15 **telephone number need not include the attorney's bar number;**

16           **(2) For a child placing agency licensed under the laws of Missouri, the licensure**  
17 **number on the child placing agency license. However, an agency listing in a telephone**  
18 **directory or other listing under an adoption or adoption-related category that only**  
19 **provides the agency's name, address, and telephone number need not include the agency's**  
20 **licensure number.**

21           **3. A person who knowingly or intentionally violates the terms of this section shall**  
22 **be guilty of a class A misdemeanor.**

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